

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

May 16, 2005

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IN RE. Joint Request of KMC Telecom III, LLC and)
CenturyTel Acquisition, LLC for Approval to Transfer)
Authority to Provide Telecommunication Services and)
to Sell Assets)

Docket No 05-00092
T.R.A DOCKET ROOM

RESPONSE OF KMC TO BELL SOUTH'S LETTER

KMC Telecom III, LLC ("KMC") submits the following response to the letter filed by BellSouth Telecommunications, Inc. ("BellSouth") concerning BellSouth's petition to intervene in the above-captioned proceeding.

This case arises from a joint petition filed by KMC and CenturyTel Acquisition, LLC ("CenturyTel") in which CenturyTel seeks approval, pursuant to T.C.A. §65-4-113, to transfer its intrastate certificate and certain assets, including its customer base in Chattanooga, Tennessee to CenturyTel. Such transfer of operating authority, including the transferor's assets and customer base, are relatively common at the TRA and do not require an evidentiary hearing. See, for example, "In Re: Petition of Newsouth Holdings, Inc., Newsouth Communications Corp., and Nuvox Communications, Inc. for Approval of an Internal Corporate Reorganization, Transfer of Authority, and for Approval, as Necessary, of Related Transactions," Docket 04-00309, order issued April 13, 2005.

Under the mistaken belief that KMC and CenturyTel have asked the TRA to approve an assignment of the KMC-BellSouth interconnection agreement, BellSouth has asked to intervene in this proceeding. BellSouth does not oppose the transfer or make any argument that CenturyTel, which already owns three incumbent local exchange carriers and one competitive local carrier in Tennessee, is not qualified to offer the services now offered by KMC. Instead, BellSouth raises concerns about the "potential assignment of the interconnection agreement" and questions whether BellSouth's interest will be protected in the proposed asset transfer. Petition to Intervene, at 1-2.

The interconnection agreement between KMC and BellSouth contains the following provision regarding assignment:

Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto,

which consent shall not be unreasonably withheld; provided, however, that, so long as the performance of any assignee is guaranteed by the assignor: (i) either Party may assign its rights and delegate its benefits, duties and obligations under this Agreement, without the consent of the other Party, to any Affiliate of such Party and (ii) either Party may assign its rights and delegate its benefits, duties and obligations under this Agreement, without the consent of the other, to any person or entity that obtains control of all or substantially all of such assigning Party's assets, by stock purchase, asset purchase, substantially all of such assigning Party's assets, by stock purchase, asset purchase, merger, foreclosure or otherwise. Each Party shall notify the other in writing of any such assignment. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.

In other words, nothing in the agreement requires TRA approval of an assignment of the contract to another carrier. Under certain conditions, KMC can assign the contract to another carrier without BellSouth's agreement, under other conditions, KMC must obtain BellSouth's agreement in order to assign the contract to another carrier but BellSouth's agreement cannot be "unreasonably withheld." Thus, like any other provision of an interconnection agreement, this "assignment" clause would not come before the Authority unless the parties were unable to agree and one of them filed a complaint at the TRA to enforce this section of the agreement. Of course, no such complaint has been filed and, if filed, would be addressed in another proceeding.

In this case, the joint petitioners only seek approval of the transfer of KMC's certificate, along with some assets and some customers, to CenturyTel, pursuant to T.C.A. §65-4-113. Once the transfer is approved, CenturyTel will assume the obligations to serve KMC's 100 customers in Chattanooga. As discussed, there is no question that CenturyTel has the managerial, technical, and financial abilities to provide that service. But neither CenturyTel nor any other competing local carrier is required to obtain an interconnection agreement with BellSouth before the CLEC is allowed to obtain a certificate. To the contrary, BellSouth will not typically enter into such an agreement until after the CLEC has obtained intrastate operating authority. Once that occurs, the CLEC may negotiate an agreement with BellSouth, or "opt in" to another carrier's agreement through an assignment or through 47 U.S.C. 252(i). The Authority would not be involved in this process unless a complaint is filed concerning the interconnection issue.

Here, there is no issue before the Authority except the joint petition for approval of the transfer of KMC's certificate, along with some assets and customers, to CenturyTel. This is not an opportunity for BellSouth to try to use the regulatory process to delay the transfer in order to gain bargaining leverage with KMC in discussions on other issues.

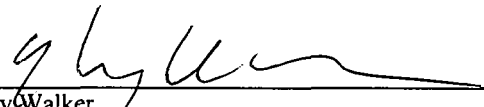
Since the TRA may approve this transfer without a hearing, BellSouth has no right to intervene unless the carrier files a complaint which meets the requirements set forth in Consumer Advocate v. Greer, 976 S.W.2d 759 (Tenn 1998). A petition to intervene based on a mistaken assumption of fact and a letter from counsel reporting conversations outside the record and talking about issues which have nothing to do with the relief requested by the joint petitioners are not sufficient.

BellSouth's petition to intervene should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By

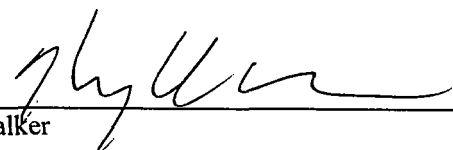

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Guy Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street
Nashville, TN 37201-3300

on this the 16 day of May 2005.


Henry Walker